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10/594,008	02/26/2007	Jens H.S. Nygaard	M0025.0359/P359	8858

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DICKSTEIN SHAPIRO LLP  
1825 EYE STREET NW  
Washington, DC 20006-5403

EXAMINER
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CHENEVERT, PAUL A

ART UNIT	PAPER NUMBER
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3612

MAIL DATE	DELIVERY MODE
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03/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,008	<b>Applicant(s)</b> NYGAARD, JENS H.S.	
	<b>Examiner</b> Paul A. Chenevert	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2006 09 25</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Election/Restrictions***

2. It is noted that a separate airfoil invention was disclosed within this application. The Examiner wishes to make note that if any claims to this material are introduced, that no search has been performed in regards to the rear underneath airfoil with inlet door(s).

### ***Information Disclosure Statement***

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. US 5,653,497; US 5,860,689; EP 1,186,483.

***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “3” has been used to designate both windshield and second strengthening member (SM) in Figures 1, 2 & 8 (see page 26, line 15).

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “8” has been used to designate both the holes in Figure 1 and the single rib in Figure 6 (see page 27, line 21).

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- a. 11 in Figures 10-14 (see page 28, line 20).
- b. 35 in Figure 22 (see page 30, line 2).

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description:

- a. 39 (field of vision) mentioned on page 31, line 25 as appearing in Figure 23.
- b. 94 (web) mentioned on page 38, line 24 as appearing in Figures 63-65.

8. The drawings are objected to because of the following minor informalities:

- a. The lead line for the passenger side A-pillar (38) in Figure 23 should be moved towards the exterior second longitudinal extending unit (30) (see Figure 22).
- b. Figures 41A-C should be redrawn like 40A-C in order to demonstrate (A) the start of tilting; (B) the vehicle on its side; (C) the vehicle completely turned over. Figures 48A-C, 52A-C, 53A-C & 54A-C should also be redrawn as such.

- c. Figures 48A-C & 53A-C should be redrawn with the same SM or else some description should be added to the Specification to delineate the differences between the tilt images A-B-C.
  - d. Figure 53A-C should be redrawn to illustrate the differing deployment stages of the SM. It is suggested to place the SM of C as the tilt of A, the SM of B should remain the tilt of B, and the SM of A should be changed to the tilt of C.
9. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

10. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "**means**" and "said," **should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

11. The disclosure is objected to because of the following informalities:

- a. Page 5, line 17, "place" should be changed to "placed".
- b. The use of the trademark Kevlar (page 9, line 5, page 22, line 24, page 30, line 17, and others) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.
- c. Page 13, lines 16-19, the last sentence needs clarification. It appears to be a copying error from previous paragraphs (see 4<sup>th</sup> pp on page 10 and last pp on page 12).
- d. Page 14, line 13, page 15, line 26, and page 25, line 13, "a pillars" should be changed to "a-pillars".
- e. Page 15, lines 28 & 32, "secure" should be changed to "ensure".
- f. Page 16, line 11, "from" should be added before "increasing".
- g. The paragraph on page 18, lines 3-7 is unclear and needs clarification.
- h. The term "ERTICO" on page 18, line 32, should be defined or else deleted.
- i. Page 26, line 1, "Figures 55-62" should be changed to "Figures 55-60".
- j. Page 27, lines 22 & 23 should be deleted since it is an erroneous repeat, which was correctly fixed on lines 25 & 26.

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- k. Page 28, line 20, “11” should be inserted after “strengthening structure”; (see drawing objection above).
  - l. Page 29, line 16, “Figure 17” should be changed to “Figure 20”.
  - m. Page 29, line 17, “26” should be changed to “24” and “18” should be changed to “21”.
  - n. Page 29, line 32, “33 and 34” should be changed to “34 and 33” or else the order of introduction following directly thereafter should be rearranged.
  - o. Page 30, line 2, “35” should be inserted after “adhesive”.
  - p. Page 30, line 32 and page 31, line 5, “minimised” should be changed to “minimized”.
  - q. Page 32, line 25, “b-pillars 45, c-pillars 44” should be changed to “b-pillars 44, c-pillars 45”.
  - r. Page 35, line 4, “form of” should be deleted.
  - s. Page 36, line 31, it is recommended that maybe Figures 48A-C and 54A-C should be included in the listing of various further types of SM (see drawing objections above).
  - t. Page 38, line 1, “slide” should be changed to “slider”.
  - u. Page 38, line 2, “unit” should be changed to “housing”.
  - v. Page 38, line 24, “94” should be inserted after “extending web” (see drawing objection above).
  - w. The term “ITS” on page 39, line 9, should be defined or else deleted.
- Appropriate correction is required.

***Claim Objections***

12. Claims 1-16 are objected to because of the following informalities:
- a. Claim 1, line 4, “it” should be changed to “strengthening member”.
  - b. Claim 1, line 4, “from” should be inserted after “driver”.
  - c. Claim 4, line 2, “when” should be changed to “wherein”.
  - d. Claim 4, line 3, “a” should be inserted before “triangular”.
  - e. Claim 9, line 5, “reinforcing member” should be changed to “strengthening member”.
  - f. Claim 9, line 6, “it” should be changed to “the strengthening member”.
  - g. Claims 11-15, line 1, “road” should be deleted or else “road” should be inserted before “vehicle” in claim 9, line 1.
  - h. Claim 13, line 3, “it” should be changed to “the front windscreen” or else “adjacent the front windscreen and behind it.” should be changed to “adjacent to and on the interior of the front windscreen.”.
  - i. Claim 15, line 4, “a” should be inserted before “linear direction”.
  - j. Claim 16, line 4, “it” should be changed to “the strengthening member”.
  - k. Claim 16, line 4, “from” should be inserted after “driver”.

Appropriate correction is required.



***Claim Rejections - 35 USC § 112***

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 7 & 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 7 & 18 recite the broad recitation "having a width not exceeding 65mm", and the claims also recite "preferably not exceeding 50mm", which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1-3, 5, 6, 8 & 16 and claims 7 & 18, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Strickler (US 1, 146,666; 13JUL15).

Stickler discloses a road vehicle comprising many strengthening members (h, h2) fixed to a structure of the vehicle and extending in front of the driver's position, wherein the strengthening members are dimensioned so that the strengthening members will not prevent the driver from seeing an object which is at least two meters from the front windscreen, when the driver uses binocular vision and without requiring the driver to move the driver's head. In regards to claim 2, the strengthening member is mounted within the passenger-carrying compartment of the road vehicle. In regards to claim 3, the strengthening member extends between the front structure (a2) of the vehicle and a top frame (b3) of the front windscreen. In regards to claim 5, the strengthening member is formed of at least two first linearly extending structural units (h, h2) extending from the front structure of the vehicle to the top frame of the front windscreen and second linearly extending structural units (c11, d11) joining the at least two first linearly extending units. In regards to claim 6, the second structural units are not horizontal as they follow the contour of the slanted engine compartment cover (hood). In regards to claims 7 & 18, the first linearly extending structural units of the strengthening member have a width not exceeding 50mm in the horizontal plane. In regards to claim 8, the strengthening

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member does not contact the front windscreen along the whole length of the strengthening member.

18. Claims 9-15 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogers (US 2,180,912; 21NOV39).

Rogers discloses a vehicle comprising at least one strengthening member (bullet proof shield 4) which, in a first, storage position (see Figure 1) is retracted and in a second, extended position (see Figure 2), extends between structures of the vehicle, and operating means (compression coil spring 11) for moving the strengthening member from the first position to the second position, wherein, when the strengthening member extends adjacent a front windscreen in the extended position, the strengthening member permits the driver to see through the front windscreen in the second position (through elongated sight openings 5). In regards to claim 10, the vehicle is a passenger carrying road vehicle. In regards to claim 11, the strengthening member in the first and second position is mounted inside the passenger compartment of the vehicle. In regards to claim 12, the operating means comprises detector means for determining if a vehicle has impacted an object, as described on column 1, line 17. In regards to claim 13, in the second position, the strengthening member extends adjacent the front windscreen and behind the front windscreen. In regards to claim 14, the operating means is for moving the strengthening member from the first position to the second position in a time period of less than 1 second. In regards to claim 15, the strengthening member is moved from the first position to the second position by sliding in a linear direction.

***Allowable Subject Matter***

19. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not show or make obvious the Applicant's strengthening member having the form of a triangular prism which has been sheared in a vertical plane or truncated sheared triangular pyramid.

***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is (571)272-6657. The examiner can normally be reached on Mon-Fri (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Glenn Dayoan/  
Supervisory Patent Examiner, Art Unit 3612

Paul A. Chenevert  
Examiner  
Art Unit 3612

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